**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928**

**WP(C).No. 22337 of 2005(H)**
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**PETITIONER:**
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**O.BALAN, ASSISTANT TEACHER,**
**M.C.M.U.P. SCHOOL, MAYYANNUR.**

**BY ADV. SRI.M.VIJAYAKUMAR**

**RESPONDENTS:**
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**1. STATE OF KERALA, REPRESENTED BY**
**SECRETARY TO GOVERNMENT,**
**GENERAL EDUCATION DEPARTMENT,**
**THIRUVANANTHAPURAM.**

**2. DIRECTOR OF PUBLIC INSTRUCTIONS,**
**THIRUVANANTHAPURAM.**

**3. DISTRICT EDUCATIONAL OFFICER,**
**VADAKARA.**

**4. ASSISTANT EDUCATIONAL OFFICER,**
**THODANNUR.**

**5. K.P.RAVEENDRAN, M.C. M.U.P. SCHOOL,**
**MAYYANNUR.**

**6. THE MANAGER,**
**M.C.M.U.P. SCHOOL, MAYYANNUR.**

**BY ADV. SRI.R.K.MURALEEDHARAN**
**SRI.B.UNNIKRISHNA KAIMAL**
**SRI.KRB.KAIMAL (SR.)**
**GOVT. PLEADER SRI.T.T.MUHAMMED**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/03/2007 ALONG WITH WPC NO. 22857 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX IN W.P.C.NO.22337/05**

**PETITIONER'S EXHIBITS**

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| **EXT.P1** | **TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE A.E.O., THODANNUR** |
| **EXT.P2** | **TRUE COPY OF THE LETTER OF A.E.O. THODANNUR TO THE PETITIONER.** |
| **EXT.P3** | **TRUE COPY OF THE ORDER OF DIST. EDUCATIONAL OFFICER, VADAKARA** |
| **EXT.P4** | **TRUE COPY OF THE REVISION FILED BY MANAGER TO R2** |
| **EXT.P5** | **TRUE COPY OF THE PETITION FILED BY R6 TO R1** |
| **EXT.P6** | **TRUE COPY OF THE STAY ORDER OF R1** |
| **EXT.P7** | **TRUE COPY OF THE JUDGMENT IN W.A.NO.587/05** |
| **EXT.P8** | **TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONER BEFORE R1** |
| **EXT.P9** | **TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY R6 BEFORE R1** |
| **EXT.P10** | **TRUE COPY OF ORDER DTD. 30-06-05 OF R1** |

**5TH RESPONDENT'S EXHIBITS**

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|---|---|
| **EXT.R5(A)** | **TRUE COPY OF THE APPROVED SENIORITY LIST OF MAYANNUR CENTRAL MAPPILA U.P.SCHOOL** |
| **EXT.R5(B)** | **TRUE COPY OF THE PROCEEDINGS OF R4** |
| **EXT.R5(C)** | **TRUE COPY OF THE ORDER DTD. 29-4-04 OF THE D.E.O., VADAKARA** |
| **EXT.R5(D)** | **TRUE COPY OF THE RELEVANT PAGE OF VISIT BOOK** |
| **EXT.R5(E)** | **TRUE COPY OF THE RELEVANT PAGE OF MAGAZINE IN WHICH THE HISTORY OF THE SCHOOL IS PUBLISHED** |

**/True Copy/**

**PA to Judge.**

**K.M.JOSEPH, J.**

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**W.P.(C).NOs.22337 & 22857 of 2005**

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Dated this the 13th day of March, 2007

**JUDGMENT**

Petitioners are teachers working in the respondent school. The dispute relates to the appointment of Headmaster. It is the common case that in purported exercise of right under Article 30, the management has appointed Sri.K.P.Raveendran, 5th respondent herein as Headmaster. This is objected by the petitioners in both the cases.

2. In respect of the petitioner in W.P.(C)No.22857, it is the respondents case that he is not entitled in view of the fact that disciplinary proceedings have been initiated against him and also that there is another teacher who is senior to him. Petitioners have challenged the order issued by the Government as Ext.P2 in W.P.(C)NO.22857/05 which corresponds to Ext.P10 in the other writ petition. Government has proceeded to find that manager is entitled to exercise right under Article 30 and appoint

Sri.K.P.Raveendran, the 5th respondent herein. It appears that the impugned orders in both the case have passed pursuant to the judgment produced as Ext.P7 in W.P.(C)No.22337/05 in the writ appeal filed by the petitioner in W.P.(C)No.22337/05. Therein, this court directed the Government to decide the status the respondent's institution. It was made clear that if the Government find that the respondent's institution is not a minority institution, petitioner in W.P.(C)No.22337/05 is entitled to get all service benefits including pay and allowances from 01-06-2004 onwards as Headmaster.

3. In the impugned order it is inter-alia stated as follows:

> " The dispute in the instant case is whether the school was established and administered for the benefit of a minority community. It is seen that the school was established in 1943 and the area is predominantly of Muslim people. ( It is true that it is established by a non-Muslim and it was purchased by Muslim Vidyabyasa Sangham, the present management of the school, in 1985 from

the founder Manager)".

4. No doubt, in para 6 it is stated that the school was established at the beginning itself for the benefits of the minority and now it is run by a minority community for the same purpose. Various other facts are mentioned. As per Article 30 , all minorities whether based on religion or language shall have the right to establish and administer educational institution of their choice. It is open even to a single individual to found a minority institution for the benefit of the minority.. But here, the finding is that it is established by a non-muslim and it is purchased by Muslim Vidyabyasa Sangam.

5. Learned counsel appearing for the manager Sri.K.R.B.Kaimal would contend that there is ample materials produced to show that the school was in fact established by the muslims.

In such circumstances, I feel that the matter will have to be re-considered. No doubt, learned counsel for the petitioners

Sri.M.Vijayakumar has raised various contentions. However, I find that the order cannot be sustained in the face of the finding that the school was established by a non-muslim and yet Government proceeds to confer minority status. Therefore, Ext.P2 in W.P.(C)NO.22857/05 and Ext.P10 in W.P.(C)No.22337/05 shall stand quashed. First respondent will re-consider the matter with opportunity of hearing to the petitioner in both the cases, the manager and the 5th respondent. Fresh decision in accordance with law will be taken by the first respondent within a period of two months from the date of receipt of a copy of this judgment. It is open to the petitioners to raise all contentions available to them under law. The position as on today will continue till a decision is taken.

**K.M.JOSEPH**
**JUDGE**

sv.